

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**BRANDON CRUM and
DENISE CRUM,**

Plaintiffs,

**v.
COAL-MAC LLC and
ARCH COAL, INC.,**

Defendants.

**Civil Action No. 2:17-cv- 2:17-cv-01931
(formerly Logan County, WV #17-c-66)**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, defendants, Coal-Mac LLC and Arch Coal, Inc. (“Defendants”), by counsel, hereby remove the above-captioned action from the Circuit Court of Logan County, West Virginia, to the United States District Court for the Southern District of West Virginia, at Charleston. As grounds for removal, defendants state as follows:

I. NATURE OF REMOVED ACTION

1. The removed case is a civil action filed on February 17, 2017, in the Circuit Court of Logan County, West Virginia, assigned Civil Action No. 17-C-66. The Complaint was served on the defendants through the CT Corporation on February 23, 2017. In accordance with 28 U.S.C. §§ 1446(a), a copy of all process, pleadings, and orders served in the state court action are attached hereto as “Exhibit A.”

II. TIMELINESS OF REMOVAL

2. The Complaint was apparently accepted for service of process on Coal-Mac LLC and Arch Coal, Inc. by the West Virginia Secretary of State on February 23, 2017. Given the foregoing, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

III. VENUE IS PROPER

3. Venue of this case is proper pursuant to 28 U.S.C. § 1441(a) because the Circuit Court of Logan County, West Virginia, is located within the Southern District of West Virginia.

IV. BASIS OF REMOVAL – DIVERSITY JURISDICTION

4. This is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and because there is diversity of citizenship between the parties. Therefore, this action may be removed to this Court under 28 U.S.C. § 1441.

V. DIVERSITY OF CITIZENSHIP

5. Plaintiff Brandon Crum and Denise Crum are citizens of the State of West Virginia. *See* Complaint at ¶ 1.

6. Defendant Coal-Mac LLC is a limited liability company (LLC). For purposes of diversity jurisdiction, the citizenship of an LLC is determined by the citizenship of all of its members. *Central West Virginia Energy Co., Inc. v. Mountain State Carbon, LLC*, 636 F.3d 101, 103 (4th Cir. 2011) (citing *Gen. Tech. Applications, Inc. v. Exro Ltda*, 388 F.3d 114, 121 (4th Cir. 2004)). *See* Complaint at ¶ 2 and Affidavit of Thomas Brown, attached as “Exhibit B,” at ¶ 3.

7. Coal-Mac LLC has no member that is a citizen of the State of West Virginia. Defendant Coal-Mac LLC is, therefore, a citizen of a state other than the State of West Virginia, pursuant to 28 U.S.C. § 1332(c)(1), for purposes of determining citizenship in diversity actions. *See* Affidavit, “Exhibit B,” ¶ 4.

8. Defendant Arch Coal, Inc. was incorporated in the State of Delaware. Its principal place of business is in the State of Missouri. *See* Complaint at ¶ 3. *See* Affidavit, ¶ 2.

9. Based on the foregoing, complete diversity of citizenship exists between Plaintiffs and Defendants.

VI. AMOUNT IN CONTROVERSY

10. Defendants deny that Plaintiffs are entitled to any recovery in this action, and by filing this Notice of Removal, Defendants do not waive any defenses that may otherwise be available to them. In light of the allegations set forth in Plaintiffs' Complaint, the amount in controversy in this case exceeds \$75,000.00, exclusive of interest and costs.

11. Plaintiffs' Complaint does not allege a specific amount of damages. However, given the types of relief that they seek, if Plaintiffs prevail at trial, it is more likely than not their damages will exceed the jurisdictional minimum of \$75,000 specified in 28 U.S.C. § 1332(a).

12. Plaintiffs contend that Brandon Crum fell "suddenly and violently" six feet to the ground. *See* Complaint, ¶ 10.

13. Plaintiffs claim Brandon Crum's alleged back, neck and shoulder injuries giving rise to this lawsuit are "permanent" and that he has "impaired mobility" and "impaired activities of daily living." *See* Complaint, ¶ 22.

14. Plaintiffs allege Brandon Crum's purported injuries have resulted in mental anguish, anxiety, sleeplessness and nightmares. *See* Complaint, ¶ 22.

15. In addition to past and future medical expenses, plaintiffs contend Brandon Crum has lost wages, benefits and sustained an impairment of future earning capacity. *See* Complaint, ¶ 22.

16. Plaintiff Denise Crum has alleged a loss of society, companionship and consortium, including "mental distress, anguish and an inordinate increase of duties around her house and in her family life." *See* Complaint, ¶ 25.

17. With regard to his lost wage and loss of future earning capacity claims, it must be noted that Plaintiff Brandon Crum earned over \$75,000 the year before the incident giving rise to this case occurred. *See* “Exhibit B,” Affidavit, ¶ 5. Plus, Crum has not worked for defendant Coal-Mac LLC since March 10, 2016. *See* “Exhibit B,” Affidavit, 6.

18. Additionally, Plaintiffs seek costs, attorneys’ fees, pre-judgment interest and post-judgment interest. *See* Complaint, Prayer for Relief.

19. Based on the foregoing, this Court has original jurisdiction over this civil action under 28 U.S.C. § 1332. Accordingly, this action may be removed to this Court under 28 U.S.C. § 1441.

VII. OTHER REMOVAL REQUIREMENTS

20. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal, along with a Notice of Filing of Notice of Removal, is being sent to all opposing parties and filed with the Clerk of the Circuit Court of Logan County, West Virginia. A copy of the Notice of Filing of Notice of Removal is attached hereto as “Exhibit C.”

WHEREFORE, Defendants Coal-Mac LLC and Arch Coal, Inc., by counsel, respectfully request that this civil action be removed from the Circuit Court of Logan County, West Virginia, to the United States District Court for the Southern District of West Virginia at Charleston and that this Court assume jurisdiction over this action.

Respectfully submitted this 20th day of March, 2017.

**COAL-MAC LLC and
ARCH COAL, INC.,
By Counsel,**

/s/ Jeffrey K. Phillips

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 2017, I caused service of the foregoing “**Notice of Removal**” was electronically filed with the U.S. District Court Clerk, Southern District of West Virginia, by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

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